IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.559 OF 2006
IN
SUMMARY SUIT NO.2525 OF 2006

Bina Dudani. ...Plaintiff.
Vs.
Om Prakash Nihlani & Anr. ...
Defendants.

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Mr. Bhaven Bhalia i/b. Bipin Joshi for the Plaintiff.
Mr. P.V. Nichani for the Defendants.

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CORAM : DR.D.Y.CHANDRACHUD, J.
20th March 2007.

P.C.:

The suit in the present case is based on a Demand Promissory Note executed on 7th November 2003 by the Defendants.

2. An affidavit in reply has been filed by the Defendants to the Summons for Judgment in which it has been stated that the First Defendant was known to one Shri Ashok Karamchandani for several years since they were neighbours in the same building. Between 1999 and 2001, the said Shri Karamchandani is alleged to have paid a sum of Rs.25 lakhs in eight instalments, all in cash to the Defendants. The signature of the First Defendant was, it is

alleged, initially obtained on blank Promissory Notes and subsequently the signature of the Second Defendant was also obtained. The defence in the reply is that the entire amount of the loan was cleared in 2002 along with an "exorbitant rate of interest" and that an amount of Rs.35 lakhs was paid as against a loan of Rs.25 lakhs. Thereafter, according to the Defendants, on 22nd April 2006 they learnt that the eight blank Promissory Notes were distributed to persons unknown to them who had misused the Promissory Notes.

3. Eight Summary Suits were filed in relation to the aforesaid Promissory Notes in which decrees have been passed in five suits. The statement of the Plaintiff that the said five suits have been decreed is confirmed before the Court by Counsel appearing on behalf of the Defendants.

4. There is absolutely no merit in the defence to the suit. The execution of the Promissory Notes by the Defendants is not denied, nor for that matter do the Defendants deny the receipt of a loan of Rs.25 lakhs in respect of which the Promissory Notes executed in the present case constitute security. It is

inconceivable, if the Defendants were to pay an amount of Rs.35 lakhs in full satisfaction of the claim of the Plaintiffs, that they would not have sought the return of the Promissory Note or a due receipt for payment.

5. In this view of the matter, the defence is lacking any credibility. However, having regard to the interests of justice, I am of view that an opportunity should be granted to the Defendants to contest the suit subject to a deposit of the principal amount of Promissory Note. In the circumstances, conditional leave to defend is granted to the Defendant, subject to a deposit of an amount of Rs.1,00,000/- being the principal amount within a period of four weeks from today. In the event that the amount is so deposited, the amount shall be invested by the Prothonotary & Senior Master in a fixed deposit of a Nationalized Bank to be renewed periodically pending disposal of the suit. The Defendants would be at liberty to file their Written Statement(s) within a period of 8 weeks of the deposit. The Summons for Judgment is accordingly disposed of.

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